

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MAY 23 2002

D.J. SIMMONS, INC.,

Plaintiff,

v.

**F. BRIAN BROADDUS and B/R
ENERGY PARTNERS, INC.,**

Defendants.

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R. P. Simmons
CLERK

No. CIV 99-1105 JP/LFG

**PLAINTIFF'S PROPOSED
SUPPLEMENTAL FINDINGS OF FACT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW D. J. SIMMONS, INC. ("Simmons"), Plaintiff herein, and files this its Plaintiff's Proposed Supplemental Findings of Fact and moves this Court to adopt the following findings of fact.

SUPPLEMENTAL FINDINGS OF FACT

1. Prior to the negotiation of the 1995 and 1996 Gas Contracts, B/R Energy acted as advisor and agent to Simmons in its entering into three gas contracts with Snyder and one gas contract with Cook Inlet over the prior four years.

2. Prior to the negotiations of the 1995 and 1996 Gas Contracts, B/R Energy was in a confidential relationship with Simmons in which Simmons reposed trust and confidence in the integrity and fidelity of B/R Energy, such that Simmons relaxed the care and vigilance it would and should have ordinarily exercised when dealing with a stranger.

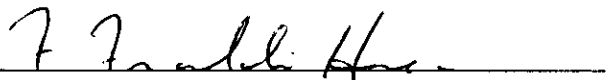
3. B/R Energy's submitting monthly reports to Simmons including a Liquid Credit Summary which reported the gallons of liquid components as "Gal Rec. Ethane" was an action

which B/R Energy utilized to conceal that it was not accounting for the liquid credit based on actual gallons recovered.

4. B/R Energy had superior knowledge of gas marketing, the terms of its agreements downstream to move Simmons' gas which it purchased at the wellheads and El Paso Field Services' confidential data on the actual gallons recovered from each meter, in connection with negotiating the 1995 Gas Contract, 1996 Gas Contract, and the 1998 Gas Contract.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via Hand Delivery to the following on this 21 day of May, 2002:

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